

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10 CR 37**

UNITED STATES OF AMERICA

Vs.

EMMANUEL SHERMAIN HEMPHILL.

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ORDER

THIS CAUSE coming on to be heard before the undersigned, pursuant to a letter from defendant addressed, “To whoever (sic) this may concern” (#15) dated August 28, 2010 and a subsequent motion entitled “ Motion to Withdraw as Counsel of Record and Allow Defendant to Proceed Pro Se” (#14) filed by Fredilyn Sison, attorney for the defendant. In the letter sent by defendant, the defendant requests he be allowed to act as his own attorney in this matter. At the call of the matter on for hearing it appeared the defendant and his counsel were present and the government was present and represented through Assistant United States Attorney Richard Edwards. From the statements of the defendant, Ms. Sison, Mr. Edwards and the records in this cause, the undersigned makes the following findings:

Findings. On June 1, 2010 the grand jury returned a one count bill of indictment presenting criminal charges against the defendant. In that count, defendant was charged with a violation of 18 USC § 922(g)(1), that being possession of a firearm after having been convicted of a crime punishable by imprisonment for a term

exceeding one year. At the initial appearance hearing for the defendant, defendant requested counsel be appointed to represent him. That motion was allowed and Fredilyn Sison of the Federal Defenders Office was appointed to represent the defendant.

By letter dated August 28, 2010, defendant appears to request permission to act as his own attorney in this matter. In the motion filed by Ms. Sison, Ms. Sison states the defendant has asserted his right to proceed *pro se* and requests she be allowed to withdraw as his counsel of record and for defendant to represent himself at trial.

At the hearing concerning defendant's motion, the undersigned made inquiry of the defendant as set forth in Benchbook for U.S. District Court Judges, Fourth Edition, 1.02, p. 5 (September 2007). At that time, defendant advised the court he wished to withdraw his motion to act as his own attorney and it was his desire that Ms. Sison continue to represent him in this matter. After having been told by the defendant he wished to withdraw his motion the undersigned conducted further inquiry of the defendant to make a determination as to whether or not defendant's desire to withdraw his request to represent himself was both: 1) clear and unequivocal; and 2) knowing, intelligent and voluntary. United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir. 2000). Upon being questioned by the court, defendant repeatedly advised the court it was his desire to withdraw his request, that no one had threatened him in

any way regarding his withdrawal of his request, and his decision to withdraw his request was his own voluntary decision. The court finds that the defendant's decision to withdraw his request is knowing, intelligent and voluntary.

Based upon the foregoing, the undersigned has determined to enter an order allowing defendant to withdraw his motion to proceed *pro se* and deny the motion to withdraw as counsel of record filed by defendant's attorney Fredilyn Sison.

ORDER

IT IS, THEREFORE, ORDERED the defendant's motion (#15) to proceed *pro se* is hereby **ALLOWED** to be **withdrawn** and the "Motion to Withdraw as Counsel of Record and Allow Defendant to Proceed Pro Se" (#14) filed by defendant's counsel is hereby **DENIED**.

Signed: September 16, 2010

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Dennis L. Howell
United States Magistrate Judge

